

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

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IN THE MATTER OF: :
:
JC 7 LLC, :
t/a NY NY Diva : Show Cause
: Hearing
2406 18th Street NW :
Retailer CR :
License No. 92380 :
Case No. 14-251-00089 :
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OCTOBER 1, 2014

The Alcoholic Beverage Control Board met in the Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street N.W., Washington, D.C., Chairperson Ruthanne Miller, presiding.

PRESENT:

RUTHANNE MILLER, Chairperson
DONALD BROOKS, Member
NICK ALBERTI, Member
HERMAN JONES, Member
MIKE SILVERSTEIN, Member
HECTOR RODRIGUEZ, Member
JAMES SHORT, Member

ALSO PRESENT:

ABYIE GHENENE, Investigator ABRA
ERIN MATHIESON, Investigator ABRA

P R O C E E D I N G S

10:53 a.m.

MR. STERN: First case that we would be doing is 14-251-00089. In that case the government's evidence will show that the investigators were there on two different days, on March 15th, at approximately 12:45 a.m. Investigators, well the police officers appeared at the establishment. They called the investigators who arrived at 1:35 a.m. On that date, there was a female patron who was very young, carrying an alcohol beverage, leaving the establishment. The investigator stopped her and it turned out she was 20 years old. She told the investigators that she had paid \$20.00 at the door to get in and that her identification was not checked. The establishment also had well more about 500 people in the establishment, well over the maximum number of allowable people. In addition they had violated their Settlement

1 Agreement. They had allowed the use of
2 tobacco products inside, they had also
3 allowed the use of a controlled substance,
4 that is marijuana, inside the establishment.
5 And that the establishment was not
6 adequately, denied the adequate security for
7 its history, for what it was doing. At the
8 end of the, the evidence, all of that was
9 determined by the investigators and the
10 police officers on the scene, on the date of
11 the establishment. On the date of the
12 violation. At the end of the case the
13 government's evidence will show that the
14 establishment allowed the sale of the
15 consumption of alcohol, didn't check proper
16 ID, didn't, I'm sorry. Failed to gain,
17 excuse me, changed their, didn't operate in
18 compliance with their Certificate of
19 Occupancy, violated the Settlement
20 Agreement, allowed tobacco use, allowed
21 marijuana use and allowed a transfer of
22 responsibility for security, in violation of

1 each of the portions of the codes cited in
2 the notice. At the conclusion of the
3 evidence, for this and for the other cases,
4 the Court will be asking for a revocation of
5 its license. Excuse me, the government will
6 be asking for a revocation of its license.
7 We would call our first witness, who is
8 Sergeant, I'm sorry, Kuchta.

9 CHAIR MILLER: Good morning. Do
10 you swear to tell the truth, the whole
11 truth, nothing but the truth?

12 SGT. KUCHTA: I do.

13 CHAIR MILLER: Thank you.

14 MR. STERN: Good morning. Can
15 you give me your name, rank and duty
16 assignment?

17 SGT. KUCHTA: Sergeant Joseph
18 Kuchta K-U-C-H-T-A. I'm a Sergeant with the
19 Third District.

20 MR. STERN: Okay. And were you
21 so assigned on March 15th and March 25th,
22 2014?

1 SGT. KUCHTA: I was.

2 MR. STERN: And on or around that
3 time, were you familiar with an
4 establishment that goes by the trade name of
5 New York New York Diva?

6 SGT. KUCHTA: Yes, sir.

7 MR. STERN: Okay. How is it that
8 you were familiar with that establishment?

9 SGT. KUCHTA: I'm in charge of
10 the unit handles Adams Morgan. So I'm
11 pretty much up there every night while I'm
12 working.

13 MR. STERN: Okay. And had you
14 had, prior to the dates that I mentioned,
15 had you had dealings with this
16 establishment?

17 SGT. KUCHTA: New York New York
18 Diva, I would say was our number one problem
19 in Adams Morgan area. Most of our calls
20 actually came from that location, about the
21 patrons and the fights. And events that
22 happened at that location.

1 MR. STERN: Okay. And this was
2 before these incidences?

3 SGT. KUCHTA: Absolutely. On a
4 daily basis.

5 MR. STERN: Now, going to March
6 15th, 2014 at approximately 12:55 a.m., were
7 you at New York New York Diva?

8 SGT. KUCHTA: I was.

9 MR. STERN: Okay. And can you
10 tell us, I'm sorry you have a quizzical
11 look. Talking about March 15th, 2014. Okay.
12 I am asking about March 15th, though.

13 SGT. KUCHTA: Okay.

14 MR. STERN: Were you there that
15 day?

16 SGT. KUCHTA: Yep.

17 MR. STERN: Okay. And can you
18 tell us what happened that day? What
19 brought you to that location?

20 SGT. KUCHTA: Can I refresh my
21 memory?

22 MR. STERN: Yes. If you, I'm

1 going to you what I will have marked as
2 Government's Exhibit No. 1 and ask if you
3 can take a look at that and if you can
4 refresh your recollection.

5 SGT. KUCHTA: Yes.

6 MR. STERN: And what was
7 happening on that day?

8 SGT. KUCHTA: So on March 15th the
9 establishment appeared to be over capacity.
10 And there were disorderly patrons inside and
11 outside of the location.

12 MR. STERN: Okay, can you tell me
13 with a little bit more specificity what you
14 mean by over capacity?

15 SGT. KUCHTA: When we showed up
16 to the location, I mean I physically looked
17 inside. There's a front window. And I was
18 able to see inside the location. And you
19 could tell that there was barely any room to
20 walk or move. It looked like everybody was,
21 I guess for lack of a better word, smushed
22 together. And it made it hard for people to

1 get through the club.

2 MR. STERN: Okay. Did you return
3 back there on March 25th, 2014?

4 SGT. KUCHTA: I did.

5 MR. STERN: And what was that
6 call for?

7 SGT. KUCHTA: That call for was
8 the same thing. My officers called me about
9 an overcrowding in the location. When I
10 showed up to the location, I had them call
11 the fire marshal.

12 MR. STERN: Okay. And what was
13 it that you observed when you were there?

14 SGT. KUCHTA: This is, I mean it
15 was almost the same thing every night. When
16 I showed up again, the location was overly
17 crowded. There was a line outside. It
18 seemed like that they were just trying to
19 pack as many people in there as possible.
20 I'm sure it was for the money. But when you
21 looked inside, again, it was one of those
22 things where there's just no room to move.

1 If anything happened, there would have been
2 no way for anybody to get in or out of the
3 location. We've had problems before of even
4 trying to get in when there were fights
5 inside the location.

6 MR. STERN: Okay. Did you notice
7 anything unusual regarding controlled
8 substances on that date?

9 SGT. KUCHTA: There's a strong
10 odor of marijuana emanating from the
11 location. It got even stronger when we
12 entered inside the location.

13 MR. STERN: Okay. And how long
14 have you been with the police department?

15 SGT. KUCHTA: December will be my
16 seventh year.

17 MR. STERN: And have you had
18 training regarding the identification of
19 smells of marijuana?

20 SGT. KUCHTA: Yes, I have.

21 MR. STERN: Okay. And
22 approximately how many times have you had

1 cause, if you can give me a round number, to
2 have identified marijuana during the course
3 of your duties?

4 SGT. KUCHTA: On a nightly basis.

5 MR. STERN: Okay. Over the past
6 seven years.

7 SGT. KUCHTA: Over the past seven
8 years, when I worked, you smell it a couple
9 times a night. Absolutely.

10 MR. STERN: Okay. Now when you
11 say it was a strong odor, when did you first
12 smell the marijuana?

13 SGT. KUCHTA: You could smell the
14 marijuana when the door opened on the
15 outside. The front door, every time it
16 opened, you could, you'd smell the marijuana
17 was in there. But when you were inside, it
18 was definitely a strong smell.

19 MR. STERN: Okay.

20 SGT. KUCHTA: Not like somebody
21 smoked and then was walking around. It was
22 as if they were smoking inside the location.

MR. STERN: Okay. And when you

SGT. KUCHTA: The best way to say

MR. STERN: Okay. So you could

SGT. KUCHTA: Yes.

MR. STERN: So it had been

SGT. KUCHTA: Yes.

MR. STERN: Okay. And would that

1 establishment?

2 SGT. KUCHTA: Absolutely.

3 MR. STERN: Okay. Now we know
4 that smoking marijuana is against the law,
5 or was against the law at that time.
6 Certainly in the establishment. Do you know
7 whether or not there's any prohibition with
8 smoking tobacco?

9 SGT. KUCHTA: I believe you're
10 not allowed to smoke inside of locations.

11 MR. STERN: Okay. Did you find
12 anything in the establishment regarding the
13 tobacco smoke?

14 SGT. KUCHTA: There was a cigar
15 on the ground. As far as I know, they found
16 a cigar on the ground. But I didn't see
17 anything.

18 MR. STERN: Okay. Thank you. I
19 think that's all we have on your testimony.

20 CHAIR MILLER: Okay. Board
21 questions? Yes, Mr. Short.

22 MR. SHORT: Sergeant, good

1 morning.

2 SGT. KUCHTA: Good morning, sir.

3 MR. SHORT: And welcome, thank
4 you for your service.

5 SGT. KUCHTA: Thank you.

6 MR. SHORT: You mentioned the
7 fact that you got there, it was hard to
8 enter and that people were outside and it
9 was jammed.

10 SGT. KUCHTA: Yes, sir.

11 MR. SHORT: Did that pose any
12 danger in your mind to the citizens that
13 were in the club, outside the club? Is it a
14 danger to your men, were they to enter?

15 SGT. KUCHTA: Absolutely. I
16 believe it was a danger to them and us.
17 We've had times, I mean besides even that
18 instance, where we've had to enter that club
19 because of large fights inside the location.
20 And we've had to literally push our way
21 through with probably 20 to 30 officers,
22 just to get to the second floor of the

1 location. For our safety, we needed the
2 numbers, but more that we needed the brute
3 force just to be able to get through. And
4 we had to start sending people out, as we
5 were going in to make room.

6 MR. SHORT: 20 to 30 officers.
7 All of those resources for that particular
8 licensee or establishment?

9 SGT. KUCHTA: On multiple
10 occasions. It's, it was our number one
11 problem and we're, yes. Absolutely. We,
12 every weekend it was, I had most of my
13 officers, I have approximately 20 and I had
14 at least, at bare minimum 5 to 6 out front
15 of that location at all times.

16 MR. SHORT: Thank you, very much,
17 Sergeant. Thank you, Madam Chair.

18 CHAIR MILLER: Okay. Others? I
19 just have a couple of quick questions.

20 SGT. KUCHTA: Sure.

21 CHAIR MILLER: So the tobacco
22 issue, did I hear you correct that, is the

1 only thing you saw was the cigar on the
2 ground?

3 SGT. KUCHTA: I mean I wasn't
4 really looking. I notice that. But beside,
5 I wasn't looking for cigarettes at that
6 time.

7 CHAIR MILLER: No.

8 SGT. KUCHTA: I was just in there
9 to assist with the, I'm sorry the fire, the
10 fire board that was in there. The fire
11 marshal. So, I wasn't particular looking
12 for tobacco.

13 CHAIR MILLER: Okay. And for
14 clarification, though, put that one to bed,
15 though. But on the ground inside the
16 establishment on the ground?

17 SGT. KUCHTA: Yes, it was inside
18 the establishment.

19 CHAIR MILLER: Okay. So given
20 this overcrowding situation that you
21 described, so what is it that you actually
22 do about that? You call the fire marshal?

1 SGT. KUCHTA: We called the fire
2 marshal to see if they were over capacity
3 and if they were, we assist them in, you
4 know, emptying the club. We call the ABC
5 there to make sure there was a violation.
6 We can't just go in, because it's not our,
7 you know, not part of what we do. So any
8 time we think it's over capacity, we call
9 the fire marshal.

10 CHAIR MILLER: Okay. And so
11 then, with the fire marshal there, you take
12 people out?

13 SGT. KUCHTA: Yes, yes, they go
14 in and they decide whether or not it's over
15 capacity and if it is we assist them in, we,
16 you know usually we'll tell the owner and
17 then we'll empty the club. And that's what
18 happened in that situation.

19 CHAIR MILLER: Okay.

20 SGT. KUCHTA: We told him and we
21 started emptying people out to get it under
22 capacity.

1 CHAIR MILLER: So you, just so I
2 understand what you had to do, though, you
3 did get people out to the point where
4 they're not over capacity? Or did you --

5 SGT. KUCHTA: I --

6 CHAIR MILLER: -- get everybody
7 out?

8 SGT. KUCHTA: Yes, we, I believe
9 we shut it down early that night.

10 CHAIR MILLER: Shut it down.

11 SGT. KUCHTA: About a half hour,
12 if I'm correct. It was a while ago, but,
13 yes, I take my officers and we take a large
14 group in and we start sending people out.

15 CHAIR MILLER: Okay. Thank you.
16 Others? Mr. Alberti.

17 MEMBER ALBERTI: Hi, Officer,
18 good morning. Just real quick.

19 SGT. KUCHTA: Sure.

20 MEMBER ALBERTI: So it, aside
21 from the law prohibiting the possession of
22 marijuana, is it still, am I correct in my

1 belief that it's still illegal to smoke
2 marijuana in public?

3 SGT. KUCHTA: Correct.

4 MEMBER ALBERTI: Thank you.

5 SGT. KUCHTA: Yes, sir.

6 CHAIR MILLER: Anything else?

7 MR. STERN: I have additional
8 follow up.

9 CHAIR MILLER: OKAY.

10 MR. STERN: In fact, did the fire
11 marshal tell you they were over capacity
12 that, either of those nights?

13 SGT. KUCHTA: I believe she said
14 she didn't know the exact capacity, but she
15 said they were definitely over capacity. I
16 don't think she had the exact number on her
17 at the time. I could be mistaking in that.

18 MR. STERN: Okay.

19 SGT. KUCHTA: I know she, they
20 ended up being way over capacity, to the
21 tune of 500 people, as I understand, that
22 were inside the location.

1 MR. STERN: Thank you.

2 CHAIR MILLER: Okay, Mr.
3 Rodriguez has some question.

4 MEMBER RODRIGUEZ: Yes, so what
5 about the condition of the owners? Were
6 they smoking marijuana?

7 SGT. KUCHTA: You know what, I
8 couldn't tell you, sir.

9 MR. RODRIGUEZ? I mean it sounds
10 like a big party, you know.

11 SGT. KUCHTA: You can only
12 imagine. This place is mostly out of
13 control. They definitely, I believe they
14 didn't care who or what went in there as
15 long as they were getting the money. I mean
16 that's just my opinion, from what I saw, but
17 --

18 MEMBER RODRIGUEZ: Were you face
19 to face with the owners?

20 SGT. KUCHTA: Yes.

21 MEMBER RODRIGUEZ: And so you
22 didn't detect any substance in their --

1 SGT. KUCHTA: No, I mean they
2 seemed fine. They were, I mean a lot of
3 times they were outside watching the money,
4 making sure they were getting, you know, the
5 people that were collecting the money were
6 keeping it where they should have. But, I
7 didn't notice them being intoxicated.

8 CHAIR MILLER: I have just one
9 more question. How do you know the number
10 of people that were inside?

11 SGT. KUCHTA: I'm saying from the
12 numbers now, at that night, we counted, I
13 believe there were approximately 500 people
14 that came out.

15 CHAIR MILLER: You actually
16 counted?

17 SGT. KUCHTA: I didn't physically
18 count them. I believe somebody in the ABC
19 did.

20 CHAIR MILLER: Okay. All right.
21 Thank you. Anything else? Okay. Thank
22 you, very much.

1 MR. STERN: Before we call our
2 next witness, I have been asked if the Board
3 might recall a case where there is a, a
4 separate case where there is apparently an
5 OIC and the respondent showed up late.

6 CHAIR MILLER: Oh, okay. Oh,
7 okay.

8 (Whereupon, the hearing recessed
9 at 11:10 a.m. and resumed at 11:21 a.m.)

10 CHAIR MILLER: Okay, Mr. Stern,
11 we're back on the New York New York Diva
12 cases. Good morning.

13 MR. GHENENE: Morning.

14 CHAIR MILLER: Do you swear to
15 tell the truth, the whole truth, nothing but
16 the truth?

17 MR. GHENENE: Yes, ma'am.

18 CHAIR MILLER: Okay. Mr. Stern,
19 are we still on 00089?

20 MR. STERN: Yes.

21 CHAIR MILLER: Okay.

22 MR. STERN: Good morning. Can

1 you give us your name and spell your last
2 name for the court reporter?

3 MR. GHENENE: Sure, Investigator
4 Abyie Ghenene, G-H-E-N-E-N-E.

5 MR. STERN: And are you employed?

6 MR. GHENENE: Yes, sir.

7 MR. STERN: And how are you
8 employed?

9 MR. GHENENE: I'm an investigator
10 with the Alcoholic Beverage Regulation
11 Administration.

12 MR. STERN: And were you so
13 employed on March 15, 2014 in the early
14 morning hours?

15 MR. GHENENE: Yes, sir.

16 MR. STERN: That day and time did
17 you become familiar with an establishment
18 that became known to you as New York New
19 York, by the trade name New York New York
20 Diva?

21 MR. GHENENE: Yes, sir.

22 MR. STERN: And can you tell me

1 what occurred on the early morning hours of
2 March 15?

3 MR. GHENENE: Yes, sir.

4 Investigator Erin Mathieson and I were
5 monitoring Adams Morgan that evening for
6 ABRA violations and we were driving through
7 and saw in front of New York New York Diva a
8 large police presence. And we were actually
9 flagged down by MPD. I guess they
10 recognized our vehicle and knew that we were
11 with ABRA. But we got out of the car, spoke
12 with them, and they were, expressed their
13 concerns about possible overcrowding and
14 just the rowdiness of the crowd and the
15 establishment and asked if we would look
16 into potential ABRA violations, things of
17 that nature and to contact the fire marshal.

18 MR. STERN: Now when you arrived
19 and got out of your vehicle, did you notice
20 anything in reference to patrons having
21 alcoholic beverages, which you considered
22 unusual?

1 MR. GHENENE: I believe that
2 while we were standing and speaking with
3 MPD, we observed a patron exit the
4 establishment carrying what was later
5 confirmed to be an alcoholic beverage.

6 MR. STERN: Did you have an
7 opportunity to speak with the owner?

8 MR. GHENENE: Yes, sir.

9 MR. STERN: And did you speak to
10 him about the overcrowded situation?

11 MR. GHENENE: Yes, sir, I
12 actually asked the owner, or I asked to
13 speak with an ABC manager or owner and the
14 owner, the guy who alleged he was the owner
15 and I confirmed it later on came out and
16 stated that he was unaware of what his
17 occupancy was, but if he was to guess that
18 there was approximately 300 people inside.
19 And he, himself, volunteered that he
20 believed that they were over their capacity.

21 MR. STERN: Did he explain to you
22 why he didn't know exactly how many people

1 were inside?

2 MR. GHENENE: Yes, he did. I
3 asked Mr. Kahn, who, if he used any kind of
4 devices to keep track of the amount of
5 patrons that were inside his establishment,
6 he said no.

7 MR. STERN: Were you able to
8 observe what security methods the
9 establishment was using when people were
10 entering the establishment?

11 MR. GHENENE: Yes, sir.

12 MR. STERN: And what was that?

13 MR. GHENENE: There didn't seem
14 to be any kind of set plan. People were
15 entering. It was total chaos. People were
16 entering through multiple exits, entrances.
17 They were paying at one place, it might have
18 been the entry, another place I.D.'s were
19 not being checked. It was more or less a
20 free for all.

21 MR. STERN: Were you able to see
22 people going in and out of the

1 establishment?

2 MR. GHENENE: Yes, sir.

3 MR. STERN: Were any
4 identifications checked of people going in
5 and out of the establishment.

6 MR. GHENENE: I did not observe
7 that.

8 MR. STERN: Did you have an
9 opportunity to speak with the fire marshal?

10 MR. GHENENE: Yes, sir.

11 MR. STERN: I guess I should ask
12 first, was the fire marshal present on the
13 scene?

14 MR. GHENENE: Oh, we, I contacted
15 my supervisor, that's Supervisor
16 Investigator Keith Gathers who in turn
17 contacted the fire department and requested
18 that a fire marshal respond to the scene.

19 MR. STERN: Okay. And in talking
20 with the fire marshal, did she estimate to
21 you how many people she thought was in
22 there?

1 MR. GHENENE: She may have. I
2 don't remember. But I do remember that the
3 fire marshal instantly determined that they
4 were overcrowded.

5 MR. STERN: Did you have an
6 opportunity to view any patrons with
7 alcoholic beverages which appeared to be,
8 who appeared to be underage to you?

9 MR. GHENENE: Yes, sir.

10 MR. STERN: And what occurred
11 when you saw that?

12 MR. GHENENE: While we were
13 standing outside, I believe we were still
14 waiting for the fire marshal, Investigator
15 Mathieson and I observed a female patron
16 exit the establishment with a cup of what
17 appeared to be alcohol. We later on
18 confirmed it to be alcohol.

19 CHAIR MILLER: Mm-hmm.

20 MR. STERN: How did you do that?

21 MR. GHENENE: We actually, we
22 asked her what was in the cup. But I also

1 think she turned it over to us.

2 MR. STERN: Okay.

3 MR. GHENENE: In an effort to
4 just kind of get away and be done with the
5 situation. And we confirmed her age through
6 her identification. And I believe that she
7 was 20 years old.

8 MR. STERN: And did she explain
9 how she obtained the alcoholic beverage?

10 MR. GHENENE: I don't recall. I
11 don't recall. I know that she said that she
12 paid to get in. But as far as obtaining the
13 alcoholic beverage, I'm not sure.

14 MR. STERN: Did you note whether
15 or not she had a wrist band?

16 MR. GHENENE: Yes, I believe, I
17 believe she did have a wrist band.

18 MR. STERN: Okay. Did she
19 indicate who had given her the wristband?

20 MR. GHENENE: I don't recall.

21 MR. STERN: Okay. Were you able
22 to go to all of the floors in the

1 establishment?

2 MR. GHENENE: If I remember
3 correctly while it was open and operating, I
4 remember walking into the entrance and not
5 wanting to go any further, because it was
6 that packed. And honestly I felt totally
7 unsafe and that there was absolutely no way
8 I was going to go any further while they
9 were open.

10 MR. STERN: Were you able to
11 discern any unusual smells while you were --

12 MR. GHENENE: Sure. I mean it,
13 from the middle of 18th Street, you could
14 smell marijuana from that establishment.

15 MR. STERN: Did you have an
16 opportunity, well, did you have an
17 opportunity to review the Settlement
18 Agreement with the establishment?

19 MR. GHENENE: I'm sure I have,
20 but I don't recall any of it.

21 MR. STERN: Okay. Thank you.
22 I'll follow up with the next witness.

1 CHAIR MILLER: Okay, are there
2 any board questions? Thank you, very much.

3 MR. GHENENE: Thank you.

4 CHAIR MILLER: Good morning.

5 MS. MATHIESON: Good morning.

6 CHAIR MILLER: Do you swear to
7 tell the truth, the whole truth and nothing
8 but the truth?

9 MS. MATHIESON: I do.

10 CHAIR MILLER: All right.

11 MR. STERN: Good morning. Can
12 you give us your name and spell your last
13 name for the court reporter?

14 MS. MATHIESON: Erin Mathieson.
15 Last name M-A-T-H-I-E-S-O-N.

16 MR. STERN: And are you employed,
17 Ms. Mathieson?

18 MS. MATHIESON: Yes.

19 MR. STERN: And how are you
20 employed?

21 MS. MATHIESON: As an
22 investigator with the Alcohol Beverage

1 Regulation Administration.

2 MR. STERN: Now are you familiar
3 with an establishment known by the trade
4 name New York New York Diva?

5 MS. MATHIESON: Yes.

6 MR. STERN: And were you there on
7 March 15th of 2014, in the early morning
8 hours?

9 MS. MATHIESON: Yes.

10 MR. STERN: And can you tell me
11 what occurred in the early morning hours of
12 March 14th.

13 MS. MATHIESON: Sure. We
14 responded to the location and --

15 MR. STERN: Did you say we?

16 MS. MATHIESON: Yes. Myself and
17 Investigator Ghenene, who just testified.
18 We were stopped, or actually we were in the
19 Adams Morgan area, when we were stopped by
20 MPD for overcrowding and issues to public
21 safety at New York Diva.

22 MR. STERN: Okay. And when you

1 arrived at the location, who did you speak
2 with?

3 MS. MATHIESON: Who spoke with
4 Sergeant Kuchta and Officer Wilson, from
5 MPD.

6 MR. STERN: And while speaking
7 with them, did you observe anything unusual
8 regarding patrons with alcoholic beverages?

9 MS. MATHIESON: Yes, we did
10 observe, while monitoring the front of the
11 location, we did observe a female patron
12 exit the establishment, carrying what
13 appeared to be an alcoholic beverage.

14 MR. STERN: Okay. And did you
15 speak with her?

16 MS. MATHIESON: Yes, myself and
17 Officer Wilson stopped her. Officer Wilson
18 asked her for identification. She produced
19 an I.D. indicating, I believe she was 20
20 years old. At which time I asked her how
21 she got into the establishment and she
22 advised me that she paid the person at the

1 door \$20.00 and was given a wrist band and
2 allowed to enter.

3 MR. STERN: Now did she say where
4 she had gotten the wrist band?

5 MS. MATHIESON: Yes, from the
6 person at the front door who she paid.

7 MR. STERN: Okay. Did she
8 mention whether or not they had checked her
9 identification?

10 MS. MATHIESON: She advised that
11 her identification was never checked.

12 MR. STERN: And while you were
13 there, did you see patrons leaving or
14 entering the establishment?

15 MS. MATHIESON: Yes.

16 MR. STERN: And can you tell me
17 what security measures were being taken
18 regarding patrons entering the
19 establishment?

20 MS. MATHIESON: Sure. There was,
21 I believe it's been described as chaotic,
22 but there was a number of people entering

1 and exiting. There's a summer garden area
2 that's to the right that has a door. And
3 then there's the main door. So the main
4 door was used as a primary egress, ingress,
5 I guess location. Security was stationed
6 there. And there were patrons who had
7 previously been inside, who were being
8 allowed to re-enter without being checked at
9 all. Some patrons were stopped and given a
10 brief pat down. Others were allowed to
11 enter. And then there were other patrons
12 who were observed entering through the
13 summer garden door, which was not the
14 primary door. And no security was stationed
15 there. So they were entering and exiting
16 through there without being stopped or
17 checked, having their identifications
18 checked.

19 MR. STERN: Okay. While you were
20 standing outside in front of the
21 establishment, were you able to observe
22 activity through the windows of the

1 establishment?

2 MS. MATHIESON: Yes.

3 MR. STERN: And can you tell me
4 was there activity on, well, how many floors
5 are in the establishment?

6 MS. MATHIESON: Three.

7 MR. STERN: And was there
8 activity on every floor?

9 MS. MATHIESON: Yes. We couldn't
10 see inside the third floor, but you could
11 hear music emanating. I believe the window
12 was open. So it was visible that there were
13 people up there, or there was activity up
14 there.

15 MR. STERN: Was there, do you
16 know whether or not there was a promoter on
17 sight that day?

18 MS. MATHIESON: Yes, there was.

19 MR. STERN: And did you have an
20 opportunity to speak with him?

21 MS. MATHIESON: I did.

22 MR. STERN: And can you tell me

1 what he told you, regarding security?

2 MS. MATHIESON: He did not advise
3 me of anything specifically regarding
4 security procedures.

5 MR. STERN: Did you see him that
6 day?

7 MS. MATHIESON: Yes.

8 MR. STERN: And did you see him
9 relating to patrons who were wearing wrist
10 bands?

11 MS. MATHIESON: Yes.

12 MR. STERN: And what was it that
13 he was doing regarding them?

14 MS. MATHIESON: So at one point,
15 when we were speaking with the owner, he
16 had, we advised him of the issues, that the
17 fire marshal had been called, and the owner
18 relayed a message to the promoter, or excuse
19 me, to the security door staff, to stop
20 letting people in. At one point then,
21 several moments later, minutes later, the
22 promoter, whose name, I believe was Allen

1 Ishiara. He approached myself and MPD and
2 asked when the establishment would be
3 allowed to continue to let people in. We
4 advised him that we didn't give any orders
5 to stop letting people in, that that was the
6 owner. He then took it upon his own accord
7 to instruct security to begin letting
8 patrons into the establishment. At which
9 time he was allowing, we observed him
10 allowing patrons to freely walk in. They
11 appeared to be re-entry, but he was just
12 letting them walk in and bypass security.

13 MR. STERN: Okay, was, how would
14 you describe his position Vis a Vis security
15 at the front door?

16 MS. MATHIESON: It appeared as
17 though he was in charge. He was giving
18 instructions. He was advising security who
19 to let in, when to let them in and he
20 basically overrode the owner, who had given
21 the instruction to stop letting people in.

22 MR. STERN: Now did you have an

1 opportunity to go inside of the
2 establishment?

3 MS. MATHIESON: Yes.

4 MR. STERN: And did you notice
5 anything unusual regarding aromas coming
6 from inside the establishment?

7 MS. MATHIESON: Yes. I believe
8 when we entered the second floor of the
9 establishment, there was a very strong odor
10 of marijuana that was present.

11 MR. STERN: Okay. And we'll go
12 into more depth later. But were you also at
13 the establishment on March 2nd?

14 MS. MATHIESON: I can't recall
15 specifically.

16 MR. STERN: Okay. I'm going to
17 show you another, what I will have marked as
18 Government's Exhibit G-2 and ask if you
19 recognize this.

20 MS. MATHIESON: Yes. I do
21 recognize it.

22 MR. STERN: And what is that?

1 MS. MATHIESON: It's an
2 investigative report I prepared on New York
3 New York Diva.

4 MR. STERN: And for what case is
5 that?

6 MS. MATHIESON: Case No. 14-251-
7 00085.

8 MR. STERN: And what date did
9 that investigative report report an incident
10 of?

11 MS. MATHIESON: March 2nd, 2014.

12 MR. STERN: Were you there on
13 that date?

14 MS. MATHIESON: Yes.

15 MR. STERN: Was there anything
16 unusual on that date regarding aromas coming
17 from the establishment?

18 MS. MATHIESON: Yes. On that
19 location, or excuse me, on that date, the
20 odor of marijuana was extremely prominent
21 and during let out, I was standing on 18th
22 Street and I was able to smell the marijuana

1 from 18th Street prior to even entering the
2 establishment. And when I entered the
3 establishment, it was immediately put into a
4 cloud of smoke, the smoke was so thick that
5 literally I could taste it in my mouth. It
6 was all, it was consuming.

7 MR. STERN: Did you speak with
8 the owner on that date regarding that?

9 MS. MATHIESON: I did.

10 MR. STERN: And what did you, and
11 on that date when you spoke to the owner,
12 what did you speak about regarding the smell
13 that you had observed?

14 MS. MATHIESON: Well, I advised
15 the owner that there was a strong odor of
16 marijuana. In addition we found, or I found
17 several cigar packages, empty wrappers
18 including one that still had a cigar I it.
19 I advised him of that.

20 MR. STERN: Okay, so that was,
21 we'll get more in detail in just a second.

22 MS. MATHIESON: Sure.

1 MR. STERN: But, so that occurred
2 on March 2nd --

3 MS. MATHIESON: Correct.

4 MR. STERN: -- is that right? So
5 on March 15th, it was less than two weeks
6 later when you went in again to these
7 establishments?

8 MS. MATHIESON: Correct.

9 MR. STERN: And on that date, I'm
10 sorry was it your testimony that there was
11 again a very strong odor?

12 MS. MATHIESON: Yes.

13 MR. STERN: Now did you have an
14 opportunity to view the third floor went you
15 went to the establishment?

16 MS. MATHIESON: Yes.

17 MR. STERN: On March 15th?

18 MS. MATHIESON: Yes.

19 MR. STERN: And what is it that
20 you observed there?

21 MS. MATHIESON: The third floor
22 of the establishment, we observed a bar that

1 was fully stocked, fully set up. It was a
2 fully functional operational floor.
3 Additionally I believe I found some wrist
4 bands that were just lying on the ground,
5 that I picked up.

6 MR. STERN: Okay, now did you
7 speak to the owner about the smell of
8 marijuana on the 15th?

9 MS. MATHIESON: Yes.

10 MR. STERN: And what is it that
11 he said to you on that date?

12 MS. MATHIESON: Mr. Kahn, the
13 owner, he advised me that, he admitted that
14 it did smell like marijuana, but he advised
15 that it was not as bad as it had been two
16 weeks ago.

17 MR. STERN: Now, were you able to
18 in part of your investigation, talk to the
19 Department of Health?

20 MS. MATHIESON: During my
21 previous investigation for the March 2nd
22 incident, I did confirm, or I did speak with

1 Lisa Davis from the Department of Health.

2 MR. STERN: And did the
3 establishment have any waiver or permission
4 to smoke any sort of lit tobacco or other
5 product?

6 MS. MATHIESON: No. The owner,
7 Mr. Kahn, had advised that he applied for,
8 and got an exemption for the tobacco ban,
9 however, Ms. Lisa Davis, from the Department
10 of Health, confirmed that he was not on the
11 list of establishments that were exempt from
12 the smoking ban.

13 MR. STERN: Okay. Now when you
14 arrived on the third floor of the
15 establishment, can you give us some
16 indication of whether or not it appeared to
17 be a functional bar?

18 MS. MATHIESON: Yes, it was a
19 fully stocked, fully functional bar. There
20 was actually a bar tender who was cleaning
21 up that bar.

22 MR. STERN: Okay. Did you have

1 an opportunity, as part of your
2 investigation, to review the Settlement
3 Agreement of this establishment?

4 MS. MATHIESON: Yes.

5 MR. STERN: And did it mention
6 anything regarding the use of the third
7 floor?

8 MS. MATHIESON: Yes. I believe
9 it was item number six, letter G, stated
10 there will be no patron use of the third
11 floor of 2406 18th Street, Northwest.

12 MR. STERN: And is that an
13 attachment to your report?

14 MS. MATHIESON: I believe I
15 included it as an exhibit, yes.

16 MR. STERN: Now did you also have
17 an opportunity to speak with the fire
18 marshal?

19 MS. MATHIESON: Yes, on the night
20 of the incident, I spoke with the fire
21 marshal.

22 MS. MATHIESON: And did she

1 indicate to you what the certificate of
2 occupancy for the establishment was?

3 MS. MATHIESON: Yes. Her name is
4 Gayla McDougal. And she and I actually
5 reviewed the certificate of occupancy
6 together. There were actually two
7 certificates of occupancy. Combined total,
8 I believe was, allowed 196 people.

9 MR. STERN: Okay. And was there
10 more than, first of all, does the
11 certificate of occupancy allow for any
12 patrons on the third floor?

13 MS. MATHIESON: No. The third
14 floor was not listed on the certificate of
15 occupancy.

16 MR. STERN: And based on your
17 investigation, did it appear to you as
18 though patrons had been using the third
19 floor?

20 MS. MATHIESON: Yes.

21 MR. STERN: And on that night did
22 there, do you know whether or not there were

1 more than 196 patrons in the establishment?

2 MS. MATHIESON: Yes, on the night
3 in question, Inspector McDougal concluded
4 that the majority, or approximately 500
5 people had been observed exiting the
6 establishment, meaning that they had at one
7 point been inside.

8 MR. STERN: Okay. Thank you.
9 That's all the questions I have, as to this
10 case.

11 CHAIR MILLER: Okay. Questions?

12 MR. SHORT: I'd like to.

13 CHAIR MILLER: Yes, Mr. Short.

14 MR. STERN: Oh, one, I'm, excuse
15 me, I'm sorry.

16 CHAIR MILLER: Oh, sorry. All
17 right.

18 MR. STERN: Before questioning.

19 CHAIR MILLER: All right.

20 MR. STERN: We would move the
21 admission of Government's Exhibit G-1 and G-
22 2, which were, let me her, let her identify

1 G-1. And I, I'd like to show you what I'm
2 having marked as Government's Exhibit G-1.
3 Can you identify what that is?

4 MS. MATHIESON: That is the
5 investigative report that I prepared
6 regarding the case.

7 MR. STERN: That's for the
8 incident of March 15th?

9 MS. MATHIESON: Correct.

10 MR. STERN: We move for
11 Government's Exhibits G-1 and G-2 both of
12 them identified --

13 CHAIR MILLER: I'm sorry. I
14 missed what G-2 is.

15 MR. STERN: G-2 was identified by
16 Investigator Mathieson as the investigative
17 report for a March 2nd incident, which will
18 be used as a basis for establishment of
19 facts.

20 CHAIR MILLER: Okay. All right.
21 They're admitted. Okay, Mr. Short?

22 MR. SHORT: Yes, good morning,

1 still.

2 MS. MATHIESON: Good morning.

3 MR. SHORT: Investigator. I'm a
4 little concerned, I'm hearing a lot about
5 the marijuana smoke and how strong it was.
6 And I'm really concerned for the
7 investigators that have to go in that type
8 of atmosphere and some other agencies kind
9 of make provisions for that. And if we not
10 do, Madam Chair, I would suggest that this
11 board take some steps so we can protect our
12 investigators, because they consume these
13 drugs into their system and can cause some
14 problems for them down the road. It should
15 be properly documented and maybe some
16 measures should be taken to protect them.
17 Because if smoke is that thick, they could
18 become intoxicated themselves, when they
19 need to do their job, which is a real danger
20 for everyone. If you smell it out on 18th
21 Street, it's really become a nuisance for
22 the whole community.

1 MS. MATHIESON: Thank you.

2 MR. SHORT: Thank you.

3 CHAIR MILLER: Okay. Others?

4 I'm sorry, I just want to make sure I hear
5 you right, just on the number. The
6 certificate of occupancy, did you say 196
7 or?

8 MS. MATHIESON: Correct. There
9 two --

10 CHAIR MILLER: Together?

11 MS. MATHIESON: --certificate of
12 occupancy. One, I guess was for the 2408
13 portion, which was the right side of the
14 establishment. The other was for the 2406,
15 which was the left portion.

16 CHAIR MILLER: Mm-hmm.

17 MS. MATHIESON: To include the
18 first and second floor. And I believe the
19 combined total to include persons read at
20 196.

21 CHAIR MILLER: Okay. And then
22 did you also give a count of the number of

1 patrons inside as being over 400, did you
2 say that or --

3 MS. MATHIESON: The fire marshal
4 estimate it at approximately 500.

5 CHAIR MILLER: Okay.

6 MS. MATHIESON: When she first
7 entered the establishment with MPD as an
8 escort, she had come back out after few
9 minutes and was actually, it was so crowded,
10 she was unable to get the second floor. So
11 she was only able to walk through. She
12 couldn't even make it to the stairwell. So
13 she came back. At that point, she
14 instructed the establishment to start
15 clearing out, because there was no way she
16 could even get upstairs. Once they started
17 clearing out, some of the patrons inside,
18 maybe about five minutes later, she re-
19 entered. And then she was able to get to
20 the second and third floors.

21 CHAIR MILLER: So it's an
22 estimate? She didn't count?

1 MS. MATHIESON: No. I think
2 there was too many people for her to
3 actually count. But she estimated it at
4 approximately 500.

5 CHAIR MILLER: Okay. All right.
6 Thank you.

7 MS. MATHIESON: Sure.

8 CHAIR MILLER: Anything else?
9 All right. Nope.

10 MEMBER RODRIGUEZ: Oh, yes.

11 CHAIR MILLER: Yes. Mr.
12 Rodriguez.

13 MEMBER RODRIGUEZ: On that third
14 floor then.

15 MS. MATHIESON: Yes.

16 MEMBER RODRIGUEZ: That third
17 floor was off limits, right, according to
18 the settlement agreement?

19 MS. MATHIESON: Correct. It was
20 not listed on the certificate of occupancy.

21 MEMBER RODRIGUEZ: Right.

22 MS. MATHIESON: And according to

1 the settlement agreement it was not supposed
2 to be used. The establishment has never
3 applied to ABRA for a substantial change to
4 include the use of that floor.

5 MEMBER RODRIGUEZ: You found that
6 it was crowded with patrons?

7 MS. MATHIESON: Actually by the
8 time we had got there, it had already
9 cleared out. So by the time we were able to
10 get to the third floor, there were no
11 patrons left there. But there was a fully
12 operational bar, there was a bartender
13 cleaning. There was evidence that people had
14 been inside the bathroom. It was dirty.
15 There were wrist bands on the floor, et
16 cetera. There was evidence that it had been
17 used.

18 MEMBER RODRIGUEZ: Okay, thank
19 you.

20 MS. MATHIESON: Sure.

21 CHAIR MILLER: Okay, great. Thank
22 you, very much.

1 MS. MATHIESON: Thank you.

2 MR. STERN: May I ask the Board's
3 indulgence for just two minutes. We had a
4 witness show up a little late and I'd like
5 to speak to him, before I call him.

6 CHAIR MILLER: Okay. We're going
7 to take a three minute break. Five minute
8 break.

9 MEMBER RODRIGUEZ: Yes.

10 CHAIR MILLER: Three.

11

12 (Whereupon, a brief recess was taken.)

13 CHAIR MILLER: Okay, we're back
14 on the record. Continuing with the New York
15 New York Diva cases.

16 MR. STERN: Yes.

17 CHAIR MILLER: Okay.

18 MR. STERN: The government will
19 now move to Case No. 14-251-00085.

20 (Whereupon, the above case was
21 concluded at 11:47 a.m.)

22

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\$20.00 2:17 33:1 a.m 2:2,8,11 6:6 21:9,9 53:21 ABC 16:4 20:18 24:13 able 7:18 14:3 25:7 25:21 28:21 29:10 34:21 39:22 42:17 50:11,19 52:9 ABRA 1:21,22 23:6 23:11,16 52:3 absolutely 6:3 10:9 12:2 13:15 14:11 29:7 Abyie 1:21 22:4 accord 37:6 activity 34:22 35:4 35:8,13 Adams 5:10,19 23:5 31:19 addition 2:22 40:16 additional 18:7 Additionally 42:3 adequate 3:6 adequately 3:6 Administration 22:11 31:1 admission 46:21 admitted 42:13 47:21 advise 36:2 advised 32:22 33:10 36:16 37:4 40:14,19 42:13,14 43:7 advising 37:18 age 28:5 agencies 48:8 ago 17:12 42:16 agreement 3:1,20 29:18 44:3 51:18 52:1 Alberti 1:17 17:16 17:17,20 18:4 alcohol 2:13 3:15 27:17,18 30:22	alcoholic 1:2,12,13 22:10 23:21 24:5 27:7 28:9,13 32:8 32:13 alleged 24:14 Allen 36:22 allow 45:11 allowable 2:21 allowed 3:1,3,14,20 3:20,21 12:10 33:2 34:8,10 37:3 45:8 allowing 37:9,10 amount 25:4 anybody 9:2 apparently 21:4 appear 45:17 appeared 2:9 7:9 27:7,8,17 32:13 37:11,16 43:16 applied 43:7 52:3 approached 37:1 approximately 2:8 6:6 9:22 14:13 20:13 24:18 46:4 50:4 51:4 area 5:19 31:19 34:1 aromas 38:5 39:16 arrived 2:11 23:18 32:1 43:14 aside 17:20 asked 21:2 23:15 24:12,12 25:3 27:22 32:18,20 37:2 asking 4:4,6 6:12 assigned 4:21 assignment 4:16 assist 15:9 16:3,15 atmosphere 48:8 attachment 44:13	ban 43:8,12 band 28:15,17 33:1 33:4 bands 36:10 42:4 52:15 bar 41:22 43:17,19 43:20,21 52:12 bare 14:14 barely 7:19 bartender 52:12 based 45:16 basically 37:20 basis 6:4 10:4 47:18 bathroom 52:14 bed 15:14 belief 18:1 believe 12:9 13:16 17:8 18:13 19:13 20:13,18 24:1 27:13 28:6,16,17 32:19 33:21 35:11 36:22 38:7 42:3 44:8,14 45:8 49:18 believed 24:20 best 11:5,13 better 7:21 beverage 1:2,12,13 2:13 22:10 24:5 28:9,13 30:22 32:13 beverages 23:21 27:7 32:8 big 19:10 bit 7:13 board 1:2,12 12:20 15:10 21:2 30:2 48:11 Board's 53:2 break 53:7,8 brief 34:10 53:12 BROOKS 1:16 brought 6:19 brute 14:2 Building 1:13 bypass 37:12	C 2:1 call 4:7 8:6,7,10 15:22 16:4,8 21:1 53:5 called 2:10 8:8 16:1 36:17 calls 5:19 capacity 7:9,14 16:2,8,15,22 17:4 18:11,14,15,20 24:20 car 23:11 care 19:14 carrying 2:13 24:4 32:12 case 1:9 2:3,5 3:12 21:3,4 39:4,6 46:10 47:6 53:19 53:20 cases 4:3 21:12 53:15 cause 1:7 10:1 48:13 Certainly 12:6 certificate 3:18 45:1,5,11,14 49:6 49:11 51:20 certificates 45:7 cetera 52:16 Chair 4:9,13 12:20 14:17,18,21 15:7 15:13,19 16:10,19 17:1,6,10,15 18:6 18:9 19:2 20:8,15 20:20 21:6,10,14 21:18,21 27:19 30:1,4,6,10 46:11 46:13,16,19 47:13 47:20 48:10 49:3 49:10,16,21 50:5 50:21 51:5,8,11 52:21 53:6,10,13 53:17 Chairperson 1:14 1:16 change 52:3	changed 3:17 chaos 25:15 chaotic 33:21 charge 5:9 37:17 check 3:15 checked 2:18 25:19 26:4 33:8,11 34:8 34:17,18 cigar 12:14,16 15:1 40:17,18 cigarettes 15:5 cited 4:1 citizens 13:12 clarification 15:14 cleaning 43:20 52:13 cleared 52:9 clearing 50:15,17 cloud 11:11 40:4 club 8:1 13:13,13 13:18 16:4,17 codes 4:1 collecting 20:5 COLUMBIA 1:1 combined 45:7 49:19 come 11:8 50:8 coming 38:5 39:16 community 48:22 compliance 3:18 concerned 48:4,6 concerns 23:13 concluded 46:3 53:21 conclusion 4:2 condition 19:5 confirm 42:22 confirmed 24:5,15 27:18 28:5 43:10 considered 23:21 consume 48:12 consuming 40:6 consumption 3:15 contact 23:17 contacted 26:14,17 continue 37:3 Continuing 53:14
	B			
Alberti 1:17 17:16 17:17,20 18:4 alcohol 2:13 3:15 27:17,18 30:22	back 8:3 21:11 50:8 50:13 53:13 bad 42:15			

control 1:2,12,13 19:13 controlled 3:3 9:7 correct 14:22 17:12 17:22 18:3 41:3,8 47:9 49:8 51:19 correctly 29:3 count 20:18 49:22 50:22 51:3 counted 20:12,16 couple 10:8 14:19 course 10:2 court 4:4 22:2 30:13 CR 1:8 crowd 23:14 crowded 8:17 50:9 52:6 cup 27:16,22	described 15:21 33:21 detail 40:21 detect 19:22 determined 3:9 27:3 devices 25:4 different 2:7 dirty 52:14 discern 29:11 disorderly 7:10 District 1:1 4:19 Diva 1:7 5:5,18 6:7 21:11 22:20 23:7 31:4,21 39:3 53:15 documented 48:15 doing 2:4 3:7 36:13 DONALD 1:16 door 2:17 10:14,15 33:1,6 34:2,3,4,13 34:14 36:19 37:15 driving 23:6 drugs 48:13 duties 10:3 duty 4:15	25:16 33:14,18,22 34:12,15 40:1 entrance 29:4 entrances 25:16 entry 25:18 Erin 1:22 23:4 30:14 escort 50:8 establishment 2:10 2:14,19,20 3:4,5 3:11,14 5:4,8,16 7:9 12:1,6,12 14:8 15:16,18 22:17 23:15 24:4 25:5,9 25:10 26:1,5 27:16 29:1,14,18 31:3 32:12,21 33:14,19 34:21 35:1,5 37:2,8 38:2 38:6,9,13 39:17 40:2,3 41:15,22 43:3,15 44:3 45:2 46:1,6 47:18 49:14 50:7,14 52:2 establishments 41:7 43:11 estimate 26:20 50:4 50:22 estimated 51:3 et 52:15 evening 23:5 events 5:21 everybody 7:20 17:6 evidence 2:5 3:8,13 4:3 52:13,16 exact 18:14,16 exactly 24:22 excuse 3:17 4:5 36:18 39:19 46:14 exempt 43:11 exemption 43:8 exhibit 7:2 38:18 44:15 46:21 47:2 Exhibits 47:11 exit 24:3 27:16	32:12 exiting 34:1,15 46:5 exits 25:16 explain 24:21 28:8 expressed 23:12 extremely 39:20	freely 37:10 front 7:17 10:15 14:14 23:7 32:10 33:6 34:20 37:15 fully 42:1,1,2 43:19 43:19 52:11 functional 42:2 43:17,19 further 29:5,8
<hr/> D	<hr/> E		<hr/> F	<hr/> G
D 2:1 D.C 1:14 daily 6:4 danger 13:12,14,16 48:19 date 2:12 3:10,11 9:8 39:8,13,16,19 40:8,11 41:9 42:11 dates 5:14 Davis 43:1,9 day 6:15,18 7:7 11:10 22:16 35:17 36:6 days 2:7 dealings 5:15 December 9:15 decide 16:14 definitely 10:18 18:15 19:13 denied 3:6 department 9:14 26:17 42:19 43:1 43:9 depth 38:12 describe 11:3 37:14	E 2:1,1 earlier 11:10 early 17:9 22:13 23:1 31:7,11 effort 28:3 egress 34:4 either 18:12 emanating 9:10 35:11 employed 22:5,8,13 30:16,20 empty 16:17 40:17 emptying 16:4,21 ended 18:20 enter 13:8,14,18 33:2 34:11 entered 9:12 38:8 40:2 50:7,19 entering 25:10,15	25:16 33:14,18,22 34:12,15 40:1 entrance 29:4 entrances 25:16 entry 25:18 Erin 1:22 23:4 30:14 escort 50:8 establishment 2:10 2:14,19,20 3:4,5 3:11,14 5:4,8,16 7:9 12:1,6,12 14:8 15:16,18 22:17 23:15 24:4 25:5,9 25:10 26:1,5 27:16 29:1,14,18 31:3 32:12,21 33:14,19 34:21 35:1,5 37:2,8 38:2 38:6,9,13 39:17 40:2,3 41:15,22 43:3,15 44:3 45:2 46:1,6 47:18 49:14 50:7,14 52:2 establishments 41:7 43:11 estimate 26:20 50:4 50:22 estimated 51:3 et 52:15 evening 23:5 events 5:21 everybody 7:20 17:6 evidence 2:5 3:8,13 4:3 52:13,16 exact 18:14,16 exactly 24:22 excuse 3:17 4:5 36:18 39:19 46:14 exempt 43:11 exemption 43:8 exhibit 7:2 38:18 44:15 46:21 47:2 Exhibits 47:11 exit 24:3 27:16	32:12 exiting 34:1,15 46:5 exits 25:16 explain 24:21 28:8 expressed 23:12 extremely 39:20	freely 37:10 front 7:17 10:15 14:14 23:7 32:10 33:6 34:20 37:15 fully 42:1,1,2 43:19 43:19 52:11 functional 42:2 43:17,19 further 29:5,8
			face 19:18,19 fact 13:7 18:10 facts 47:19 Failed 3:16 familiar 5:3,8 22:17 31:2 far 12:15 28:12 felt 29:6 female 2:12 27:15 32:11 fight 5:21 9:4 13:19 find 12:11 fine 20:2 fire 8:11 15:9,10,10 15:22 16:1,9,11 18:10 23:17 26:9 26:12,17,18,20 27:3,14 36:17 44:17,20 50:3 first 2:3 4:7 10:11 26:12 45:10 49:18 50:6 five 50:18 53:7 flagged 23:9 floor 13:22 35:8,10 38:8 41:14,21 42:2 43:14 44:7 44:11 45:12,14,19 49:18 50:10 51:14 51:17 52:4,10,15 floors 28:22 35:4 50:20 follow 18:8 29:22 force 14:3 found 12:15 40:16 40:16 42:3 52:5 free 25:20	G 2:1 44:9 46:21 G-1 46:21 47:1,2,11 G-2 38:18 47:11,14 47:15 G-H-E-N-E-N-E 22:4 gain 3:16 garden 34:1,13 Gathers 26:16 Gayla 45:4 getting 19:15 20:4 Ghenene 1:21 21:13,17 22:3,4,6 22:9,15,21 23:3 24:1,8,11 25:2,11 25:13 26:2,6,10 26:14 27:1,9,12 27:21 28:3,10,16 28:20 29:2,12,19 30:3 31:17 give 4:15 10:1 22:1 30:12 37:4 43:15 49:22 given 15:19 28:19 33:1 34:9 37:20 giving 37:17 go 16:6,13 28:22 29:5,8 38:1,11 48:7 goes 5:4 going 6:5 7:1 14:5 25:22 26:4 29:8 38:16 53:6 good 4:9,14 12:22 13:2 17:18 21:12 21:22 30:4,5,11

47:22 48:2 gotten 33:4 government 4:5 53:18 government's 2:5 3:13 7:2 38:18 46:21 47:2,11 graphically 11:4 great 52:21 ground 12:15,16 15:2,15,16 42:4 group 17:14 guess 7:21 11:12 23:9 24:17 26:11 34:5 49:12 guy 24:14	identified 10:2 47:12,15 identify 46:22 47:3 illegal 18:1 imagine 19:12 immediately 40:3 incidences 6:2 incident 39:9 42:22 44:20 47:8,17 include 49:17,19 52:4 included 44:15 including 40:18 indicate 28:19 45:1 indicating 32:19 indication 43:16 indulgence 53:3 ingress 34:4 inside 3:2,4 7:10,17 7:18 8:21 9:5,12 10:17,22 11:6,10 11:12 12:10 13:19 15:15,17 18:22 20:10 24:18 25:1 25:5 34:7 35:10 38:1,6 46:7 50:1 50:17 52:14 Inspector 46:3 instance 13:18 instantly 27:3 instruct 37:7 instructed 50:14 instruction 37:21 instructions 37:18 intoxicated 20:7 48:18 investigation 42:18 42:21 44:2 45:17 investigative 39:2,9 47:5,16 investigator 1:21 1:22 2:14 22:3,9 23:4 26:16 27:14 30:22 31:17 47:16 48:3 investigators 2:6,8 2:11,16 3:9 48:7	48:12 Ishiara 37:1 issue 14:22 issues 31:20 36:16 item 44:9	large 13:19 17:13 23:8 late 21:5 53:4 law 12:4,5 17:21 leaving 2:14 33:13 left 49:15 52:11 letter 44:9 letting 36:20 37:5,7 37:12,21 license 1:9 4:5,6 licensee 14:8 light 11:9 limits 51:17 line 8:17 Lisa 43:1,9 list 43:11 listed 45:14 51:20 lit 43:4 literally 11:11 13:20 40:5 little 7:13 48:4 53:4 LLC 1:6 location 5:20,22 6:19 7:11,16,18 8:9,10,16 9:3,5,11 9:12 10:22 11:7 11:12 13:19 14:1 14:15 18:22 31:14 32:1,11 34:5 39:19 locations 12:10 long 9:13 19:15 look 6:11 7:3 23:15 looked 7:16,20 8:21 looking 15:4,5,11 lot 20:2 48:4 lying 42:4	manager 24:13 March 2:7 4:21,21 6:5,11,12 7:8 8:3 22:13 23:2 31:7 31:12 38:13 39:11 41:2,5,17 42:21 47:8,17 marijuana 3:4,21 9:10,19 10:2,12 10:14,16 12:4 17:22 18:2 19:6 29:14 38:10 39:20 39:22 40:16 42:8 42:14 48:5 marked 7:1 38:17 47:2 marshal 8:11 15:11 15:22 16:2,9,11 18:11 23:17 26:9 26:12,18,20 27:3 27:14 36:17 44:18 44:21 50:3 Mathieson 1:22 23:4 27:15 30:5,9 30:14,14,17,18,21 31:5,9,13,16 32:3 32:9,16 33:5,10 33:15,20 35:2,6,9 35:18,21 36:2,7 36:11,14 37:16 38:3,7,14,20 39:1 39:6,11,14,18 40:9,14,22 41:3,8 41:12,16,18,21 42:9,12,20 43:6 43:18 44:4,8,14 44:19,22 45:3,13 45:20 46:2 47:4,9 47:16 48:2 49:1,8 49:11,17 50:3,6 51:1,7,15,19,22 52:7,20 53:1 MATTER 1:5 maximum 2:21 McDougal 45:4 46:3 mean 7:14,16 8:14
H		J	K	M
half 17:11 handles 5:10 happened 5:22 6:18 9:1 16:18 happening 7:7 hard 7:22 13:7 Health 42:19 43:1 43:10 hear 14:22 35:11 49:4 hearing 1:7,13 21:8 48:4 HECTOR 1:18 HERMAN 1:17 Hi 17:17 history 3:7 honestly 29:6 hour 17:11 hours 22:14 23:1 31:8,11		K-U-C-H-T-A 4:18 Kahn 25:3 42:12 43:7 keep 25:4 keeping 20:6 Keith 26:16 kind 25:3,14 28:4 48:8 knew 23:10 know 12:3,6,15 16:4,7,16 18:14 18:19 19:7,10 20:4,9 24:22 28:11 35:16 45:22 known 22:18 31:3 Kuchta 4:8,12,17 4:18 5:1,6,9,17 6:3,8,13,16,20 7:5 7:8,15 8:4,7,14 9:9,15,20 10:4,7 10:13,20 11:5,16 11:20 12:2,9,14 13:2,5,10,15 14:9 14:20 15:3,8,17 16:1,13,20 17:5,8 17:11,19 18:3,5 18:13,19 19:7,11 19:20 20:1,11,17 32:4	M-A-T-H-I-E-S-... 30:15 ma'am 21:17 Madam 14:17 48:10 main 34:3,3 majority 46:4 making 20:4	
I		L		
ID 25:18 32:19 ID 3:16 identification 2:18 9:18 28:6 32:18 33:9,11 identifications 26:4 34:17		lack 7:21		

11:7 13:17 15:3 19:9,15 20:1,2 29:12 meaning 46:6 measures 33:17 48:16 MEETING 1:3 Member 1:16,17,17 1:18,18,19 17:17 17:20 18:4 19:4 19:18,21 51:10,13 51:16,21 52:5,18 53:9 memory 6:21 men 13:14 mention 33:8 44:5 mentioned 5:14 13:6 message 36:18 met 1:12 methods 25:8 middle 29:13 MIKE 1:18 Miller 1:14,16 4:9 4:13 12:20 14:18 14:21 15:7,13,19 16:10,19 17:1,6 17:10,15 18:6,9 19:2 20:8,15,20 21:6,10,14,18,21 27:19 30:1,4,6,10 46:11,13,16,19 47:13,20 49:3,10 49:16,21 50:5,21 51:5,8,11 52:21 53:6,10,13,17 mind 13:12 minimum 14:14 minute 53:7,7 minutes 36:21 50:9 50:18 53:3 missed 47:14 mistaking 18:17 Mm-hmm 27:19 49:16 moments 36:21 money 8:20 19:15	20:3,5 monitoring 23:5 32:10 Morgan 5:10,19 23:5 31:19 morning 4:9,14 13:1,2 17:18 21:12,13,22 22:14 23:1 30:4,5,11 31:7,11 47:22 48:2 mouth 40:5 move 7:20 8:22 46:20 47:10 53:19 MPD 23:9 24:3 31:20 32:5 37:1 50:7 multiple 14:9 25:16 music 35:11	nuisance 48:21 number 2:21 5:18 10:1 14:10 18:16 20:9 33:22 44:9 49:5,22 numbers 14:2 20:12 NW 1:8 NY 1:7,7	17:15 18:9,18 19:2 20:20,21 21:6,7,10,18,21 26:19 28:2,18,21 29:21 30:1 31:22 32:14 33:7 34:19 37:13 38:11,16 40:20 42:6 43:13 43:22 45:9 46:8 46:11 47:20,21 49:3,21 50:5 51:5 52:18,21 53:6,13 53:17 old 2:16 28:7 32:20 Once 50:16 open 29:3,9 35:12 opened 10:14,16 operate 3:17 operating 29:3 operational 42:2 52:12 opinion 19:16 opportunity 24:7 26:9 27:6 29:16 29:17 35:20 38:1 41:14 44:1,17 orders 37:4 outside 7:11 8:17 10:15 13:8,13 20:3 27:13 34:20 overcrowded 24:10 27:4 overcrowding 8:9 15:20 23:13 31:20 overly 8:16 overrode 37:20 owner 16:16 24:7 24:12,13,14,14 36:15,17 37:6,20 40:8,11,15 42:7 42:13 43:6 owners 19:5,19	packed 29:6 paid 2:17 28:12 32:22 33:6 part 16:7 42:18 44:1 particular 14:7 15:11 party 19:10 pat 34:10 patron 2:12 24:3 27:15 32:11 44:10 patrons 5:21 7:10 23:20 25:5 27:6 32:8 33:13,18 34:6,9,11 36:9 37:8,10 45:12,18 46:1 50:1,17 52:6 52:11 paying 25:17 people 2:20,21 7:22 8:19 11:18 13:8 14:4 16:12,21 17:3,14 18:21 20:5,10,13 24:18 24:22 25:9,14,15 25:22 26:4,21 33:22 35:13 36:20 37:3,5,21 45:8 46:5 51:2 52:13 permission 43:3 person 32:22 33:6 persons 49:19 physically 7:16 20:17 picked 42:5 place 19:12 25:17 25:18 plan 25:14 point 17:3 36:14,20 46:7 50:13 police 2:9 3:10 9:14 23:8 portion 49:13,15 portions 4:1 pose 13:11 position 37:14 possession 17:21
--	---	--	---	---

possible 8:19 23:13
 potential 23:16
 prepared 39:2 47:5
 presence 23:8
 present 1:15,20
 26:12 38:10
 presiding 1:14
 pretty 5:11
 previous 42:21
 previously 34:7
 primary 34:4,14
 prior 5:14 40:1
 probably 13:21
 problem 5:18 14:11
 problems 9:3 48:14
 procedures 36:4
 produced 32:18
 product 43:5
 products 3:2
 prohibiting 17:21
 prohibition 12:7
 prominent 39:20
 promoter 35:16
 36:18,22
 proper 3:15
 properly 48:15
 protect 48:11,16
 provisions 48:9
 public 18:2 31:20
 push 13:20
 put 15:14 40:3

Q

question 19:3 20:9
 46:3
 questioning 46:18
 questions 12:21
 14:19 30:2 46:9
 46:11
 quick 14:19 17:18
 quizzical 6:10

R

R 2:1
 rank 4:15
 re-enter 34:8
 re-entry 37:11

read 49:19
 real 17:18 48:19
 really 15:4 48:6,21
 recall 21:3 28:10
 28:11,20 29:20
 38:14
 recess 53:12
 recessed 21:8
 recognize 38:19,21
 recognized 23:10
 recollection 7:4
 record 53:14
 Reeves 1:13
 reference 23:20
 refresh 6:20 7:4
 regarding 9:7,18
 12:12 32:8 33:18
 36:1,3,13 38:5
 39:16 40:8,12
 44:6 47:6
 Regulation 22:10
 31:1
 relating 36:9
 relayed 36:18
 remember 27:2,2
 29:2,4
 report 39:2,9,9
 44:13 47:5,17
 reporter 22:2 30:13
 requested 26:17
 resources 14:7
 respond 26:18
 responded 31:14
 respondent 21:5
 responsibility 3:22
 resumed 21:9
 Retailer 1:8
 return 8:2
 review 29:17 44:2
 reviewed 45:5
 revocation 4:4,6
 right 20:20 30:10
 34:2 41:4 46:17
 46:19 47:20 49:5
 49:13 51:5,9,17
 51:21
 road 48:14

Rodriguez 1:18
 19:3,4,9,18,21
 51:10,12,13,16,21
 52:5,18 53:9
 room 1:13 7:19
 8:22 14:5
 round 10:1
 rowdiness 23:14
 Ruthanne 1:14,16

S

s 2:1 25:18
 safety 14:1 31:21
 sale 3:14
 saw 15:1 19:16
 23:7 27:11
 saying 20:11
 scene 3:10 26:13,18
 second 13:22 38:8
 40:21 49:18 50:10
 50:20
 security 3:6,22
 25:8 33:17 34:5
 34:14 36:1,4,19
 37:7,12,14,18
 see 7:18 11:13,15
 12:16 16:2 25:21
 33:13 35:10 36:5
 36:8
 sending 14:4 17:14
 separate 21:4
 Sergeant 4:8,17,18
 12:22 14:17 32:4
 service 13:4
 set 25:14 42:1
 settlement 2:22
 3:19 29:17 44:2
 51:18 52:1
 seven 10:6,7
 seventh 9:16
 SGT 4:12,17 5:1,6
 5:9,17 6:3,8,13,16
 6:20 7:5,8,15 8:4
 8:7,14 9:9,15,20
 10:4,7,13,20 11:5
 11:16,20 12:2,9
 12:14 13:2,5,10

13:15 14:9,20
 15:3,8,17 16:1,13
 16:20 17:5,8,11
 17:19 18:3,5,13
 18:19 19:7,11,20
 20:1,11,17
 Short 1:19 12:21
 12:22 13:3,6,11
 14:6,16 46:12,13
 47:21,22 48:3
 49:2
 show 1:7 2:5 3:13
 38:17 47:1 53:4
 showed 7:15 8:10
 8:16 21:5
 shut 17:9,10
 side 49:13
 sight 35:17
 SILVERSTEIN
 1:18
 sir 5:6 13:2,10 18:5
 19:8 22:6,15,21
 23:3 24:8,11
 25:11 26:2,10
 27:9
 situation 15:20
 16:18 24:10 28:5
 six 44:9
 smell 10:8,12,13,16
 10:18 11:3,9
 29:14 39:22 40:12
 42:7,14 48:20
 smells 9:19 29:11
 smoke 11:12,13,15
 12:10,13 18:1
 40:4,4 43:4 48:5
 48:17
 smoked 10:21
 11:10
 smoking 10:22 11:6
 11:19 12:4,8 19:6
 43:12
 smushed 7:21
 somebody 10:20
 11:8 20:18
 somewhat 11:18
 sorry 3:16 4:8 6:10

15:9 41:10 46:15
 46:16 47:13 49:4
 sort 43:4
 sounds 19:9
 speak 24:7,9,13
 26:9 32:1,15
 35:20 40:7,12
 42:7,22 44:17
 53:5
 speaking 24:2 32:6
 36:15
 specifically 36:3
 38:15
 specificity 7:13
 spell 22:1 30:12
 spoke 23:11 32:3
 40:11 44:20
 staff 36:19
 stairwell 50:12
 standing 24:2
 27:13 34:20 39:21
 start 14:4 17:14
 50:14
 started 16:21 50:16
 stated 24:16 44:9
 stationed 34:5,14
 steps 48:11
 Stern 2:3 4:14,20
 5:2,7,13 6:1,5,9
 6:14,17,22 7:6,12
 8:2,5,12 9:6,13,17
 9:21 10:5,10,19
 11:2,14,17,21
 12:3,11,18 18:7
 18:10,18 19:1
 21:1,10,18,20,22
 22:5,7,12,16,22
 23:18 24:6,9,21
 25:7,12,21 26:3,8
 26:11,19 27:5,10
 27:20 28:2,8,14
 28:18,21 29:10,15
 29:21 30:11,16,19
 31:2,6,10,15,22
 32:6,14 33:3,7,12
 33:16 34:19 35:3
 35:7,15,19,22

36:5,8,12 37:13 37:22 38:4,11,16 38:22 39:4,8,12 39:15 40:7,10,20 41:1,4,9,13,17,19 42:6,10,17 43:2 43:13,22 44:5,12 44:16 45:9,16,21 46:8,14,18,20 47:7,10,15 53:2 53:16,18 stocked 42:1 43:19 stop 36:19 37:5,21 stopped 2:15 31:18 31:19 32:17 34:9 34:16 Street 1:8,13 29:13 39:22 40:1 44:11 48:21 strong 9:9 10:11,18 11:3 38:9 40:15 41:11 48:5 stronger 9:11 substance 3:3 19:22 substances 9:8 substantial 52:3 suggest 48:10 summer 34:1,13 supervisor 26:15 26:15 supposed 52:1 sure 8:20 14:20 16:5 17:19 20:4 22:3 28:13 29:12 29:19 31:13 33:20 40:22 49:4 51:7 52:20 swear 4:10 21:14 30:6 system 48:13	taken 33:17 48:16 53:12 talk 42:18 talking 6:11 26:19 taste 40:5 tell 4:10 6:10,18 7:12,19 11:9 16:16 18:11 19:8 21:15 22:22 30:7 31:10 33:16 35:3 35:22 tender 43:20 testified 31:17 testimony 12:19 41:10 thank 4:13 12:18 13:3,5 14:16,17 17:15 18:4 19:1 20:21,21 29:21 30:2,3 46:8 49:1,2 51:6 52:18,21 53:1 thick 40:4 48:17 thing 8:8,15 15:1 things 8:22 23:16 think 12:19 16:8 18:16 28:1 51:1 third 4:19 35:10 41:14,21 43:14 44:6,10 45:12,13 45:18 50:20 51:13 51:16 52:10 thought 26:21 three 35:6 53:7,10 time 5:3 10:15 12:5 15:6 16:8 18:17 22:16 32:20 37:9 52:8,9 times 9:22 10:9 11:8 13:17 14:15 20:3 tobacco 3:2,20 12:8 12:13 14:21 15:12 43:4,8 told 2:16 16:20 36:1 total 25:15 45:7	49:19 totally 29:6 track 25:4 trade 5:4 22:19 31:3 training 9:18 transfer 3:21 truth 4:10,11,11 21:15,15,16 30:7 30:7,8 trying 8:18 9:4 tune 18:21 turn 26:16 turned 2:15 28:1 two 2:6 41:5 42:15 45:6 49:9 53:3 type 48:7	waiver 43:3 walk 7:20 37:10,12 50:11 walking 10:21 29:4 want 49:4 wanting 29:5 Washington 1:14 wasn't 15:3,5,11 watching 20:3 way 9:2 11:5,13 13:20 18:20 29:7 50:15 we'll 16:16,17 38:11 40:21 we're 14:11 21:11 53:6,13 we've 9:3 13:17,18 13:20 wearing 36:9 weekend 14:12 weeks 41:5 42:16 welcome 13:3 went 19:14 41:6,14 41:15 Wilson 32:4,17,17 window 7:17 35:11 windows 34:22 witness 4:7 21:2 29:22 53:4 word 7:21 worked 10:8 working 5:12 wrappers 40:17 wrist 28:15,17 33:1 33:4 36:9 42:3 52:15 wristband 28:19	22:18,19,19,19 23:7,7 31:4,4,21 39:2,3 53:14,15 young 2:13
<hr/>				
Z				
<hr/>				
0				
<hr/>				
00085 39:7				
00089 21:19				
<hr/>				
1				
<hr/>				
1 1:11 7:2				
1:35 2:11				
10:53 2:2				
11:10 21:9				
11:21 21:9				
11:47 53:21				
12:45 2:8				
12:55 6:6				
14-251 39:6				
14-251-00085				
53:19				
14-251-00089 1:9				
2:4				
14th 1:13 31:12				
15 22:13 23:2				
15th 2:7 4:21 6:6				
6:11,12 7:8 31:7				
41:5,17 42:8 47:8				
18th 1:8 29:13				
39:21 40:1 44:11				
48:20				
196 45:8 46:1 49:6				
49:20				
<hr/>				
2				
<hr/>				
2 46:22				
20 2:15 13:21 14:6				
14:13 28:7 32:19				
2000 1:13				
2014 1:11 4:22 6:6				
6:11 8:3 22:13				
31:7 39:11				
2406 1:8 44:11				
49:14				
2408 49:12				
25th 4:21 8:3				

2nd 38:13 39:11
41:2 42:21 47:17

3

30 13:21 14:6
300 24:18

4

400 50:1

5

5 14:14
500 2:20 18:21
20:13 46:4 50:4
51:4

6

6 14:14

7

7 1:6

8

9

92380 1:9